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Operation of Amendment to Limitation of Action Statute

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A bill to amend and reenact West Virginia Code ch. 55, art. 2, § 12 (Michie 1955), relating to the period of limitation on personal actions, was passed by the West Virginia Legislature on March 13, 1959. This act extended the statutory limitation on personal actions for which no limitation was otherwise prescribed from one to two years,[1] its effective date being June 11, 1959.[2] This necessarily presents a problem of statutory construction raised by the following situations: (1) *A* is injured by the negligence of *B* on June 1, 1958. *A* commences his cause of action on June 15, 1959. Is the statute of limitations a bar to his recovery? (2) *A* is injured on June 15, 1958, and commences his cause of action on July 1, 1959. Is the statute of limitations a bar to his recovery at this time? This issue can be determined by ascertaining the effective date of the amendment, that is, does legislation amending an existing statute of limitations operate prospectively or retrospectively?

Today there is a wide latitude left to the judiciary in the application of the myriad of statutes limiting the time within which an action may be brought, giving rise to a wealth of litigation incident to the issues thus presented. While the purpose herein will be an attempt to determine the specific solution to one phase of the law, in so doing it will be necessary to develop some general observations relating to the subject of statutes of limitations.

When a legislature prescribes time limits on the assertion of rights, it deprives one of the parties of the privilege and opportunity, after a stated time has elapsed, of invoking the aid of the courts in support of an otherwise litigable claim. The primary consideration underlying this type of legislation is undoubtedly one of fairness to a defendant, for there should come a time beyond which he ought not to be called upon to resist a claim, because "evidence has been lost, memories have faded, and witnesses have disappeared."[3] Another factor undoubtedly considered is a desire to relieve the courts of the burden of adjudicating tenuous claims thereby increasing the effectiveness of judicial procedure.[4] The particular periods are often arbitrarily established, varying with the

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[1] W. Va. Code ch. 55, art. 2, § 12 (Michie 1955).

[2] The general rule for computing a time period within which an act shall be done is that the first day shall be excluded and the last day shall be included. W. Va. Code ch. 2, art. 2, § 3 (Michie 1955).

[3] Order of R.R. Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342 (1944).

[4] *Developments—Statutes of Limitations*, 63 Harv. L. Rev. 1177 (1950).

permanence of the evidence required to prove the liability, the favor with which certain types of claims are viewed by the legislature, or the particular class of plaintiffs and defendants involved in the litigation.[5]

Limitation on actions to recover for personal injuries in tort was recognized both in the early days of Roman law[6] and common law,[7] the latter being modernized for the first time by the Limitation Act of 1623.[8] Today, statutes of limitation are defined to be such legislative enactments as prescribe the periods within which actions may be brought upon certain claims, or within which certain rights may be enforced. While the language of the specific statutes varies among the states, most provide either that "all actions shall be brought within" or "no action shall be brought more than" a certain period of time after "the cause thereof accrued."[9] Such statutes were formerly regarded with little favor, and courts devised various theories for their evasion, but they have now come to be considered as beneficial rules founded and dictated on the soundest principles of public policy, the presumption being against the one who has unreasonably delayed the assertion of his claim or demand.[10] They are statutes of repose, representing expedients rather than principles.[11] These statutes tend towards the benefit of all, for the ". . . peace of society demands that there should be, at some time, an end put to litigation, and the experience of civilized communities has shown wisdom of such provisions, and they are favored."[12]

The first general phase of statutory construction that must be considered is a determination of legislative intent as to the effect of a new statute in relation to the statute existing at the time of its passage. The legislature itself referred to the bill hereunder discussion in the title as "an act to amend and reenact. . . ,"[13] indicative of the theory that the legislature was not substituting this section completely for the then existing section, but was merely changing the scope by a substitution of certain provisions.[14] "A law is

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[5] Baker v. Hendrix, 126 W. Va. 37, 27 S.E.2d 275 (1943).
[6] SOHM, THE INSTITUTES OF ROMAN LAW, 292-85 (ledlie's Transl., 3d ed. 1907).
[7] WOOD, LIMITATIONS § 2 (4th ed. 1916).
[8] *Ibid.*
[9] Littel, *A Comparison of the Statutes of Limitations,* 21 IND. L.J. 23 (1945).
[10] *Ibid.*
[11] E.g., Page v. Shenandoah Life Ins. Co., 185 Va. 616, 40 S.E.2d 922 (1947).
[12] Johnson v. Merritt, 125 Va. 167, 176, 99 S.E. 785, 789 (1919).
[13] W. Va. Acts of 1959, ch. 2.
[14] United States v. LaFranca, 282 U.S. 568 (1931).

amended when it is, in whole or in part, permitted to remain, and . . . it is in some way changed or altered to make it more complete or prefect. . . ."[15] This distinction between an amendment and a repeal is to some extent arbitrary, the use of the terms by the courts being based on how the legislatures have applied the two terms to the particular act in question. As used by the legislatures, amendment and repeal may differ only in kind or degree, the former being additions to, as opposed to withdrawal; or partial abrogations, as opposed to abrogation of a whole section.[16]

Without taking into consideration the problems raised by that form of amendatory act which has been termed by the courts an "implied repeal," the construction given by courts to an act based on its distinction as either an amendment or a repeal must be noted. In interpreting an amendatory act, courts will follow the principles of construction used in the interpretation of the original act. The original section, as amended, and the unaltered section of the act of which it is a part (relating to the same subject matter) are read together. The Supreme Court of Appeals of West Virginia has expressed this view in the following statement:

> "Where there has been an amendment and reenactment of a former statute, the rule of construction is that the amendment becomes a part of the original act in respect to things thereafter done, as if it had been a part of the original act. The amendment becomes a part of the original statute, and of course must be read in relation to all of the provisions of the original act. . . ."[17]

The importance of this construction will appear upon the discussion of the statutory provision supplied by the legislature for determining the remedies available at the time of passage of the original act.[18] However, where the act is deemed to be repealed, any provisions that appear as explanatory to the act are also repealed.

The law does not favor the construction of an act as a repealing act, and generally courts will make an attempt to find that the act does not in fact repeal the earlier act.[19] This is particularly true in the situation involving a remedial statute, for a "statute prescribing a new remedy for an existing right should never be construed to

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[15] United States *ex rel.* Palmer v. Lapp, 244 Fed. 377, 383 (6th Cir. 1917).

[16] 1 HORACK, SUTHERLAND STATUTORY CONSTRUCTION § 2002 (3d ed. 1943).

[17] State v. Montgomery, 94 W. Va. 153, 159, 117 S. E. 870, 872 (1923).

[18] *Infra*, notes 51-57.

[19] BLACK, INTERPRETATION OF LAWS § 107 (2d ed. 1911).

abolish a pre-existing remedy in the absence of express words or necessary implication. . . ."[20]

It is contended that the statute under discussion here is not a repeal of the prior statute, but is an amendment to it. This is the expressed intent of the legislature in the act itself. ". . . Where the later of two acts covers the whole subject matter of the earlier one, *not purporting to amend it,* . . . such later act will operate as a repeal. . . ."[21] (Italics added.) Under this rule, the implication of amendment arises as a matter of legislative intention, where the purport to amend is disclosed by the characterization, title and preamble to the act among other things.[22] This legislative referal, coupled with the apparent attitude of the courts to avoid repeal, should enable any court to construe this act as one amendatory in its nature, rather than one repealing the then existing statute.

By far the most difficult aspect of the construction of the statute is the operation of the amended statute in relation to the period of limitation of causes that have arisen prior to the effective date of the amendment. This arises both in the situation where, but for the extension of time under the statute, the action would be barred because of time limitation, and the situation where the cause of action is still valid at the time the extension of the limitation takes effect.

By necessity, this involves a determination whether such a remedial statute is to be constructed as retrospective in its operation, or whether it is to be limited solely to a prospective application. Retrospective law, used interchangeably by courts and writers with the term "retroactive law," has been defined to be law which looks backward or contemplates the past, affecting acts already committed, having reference to a state of things existing before the action in question.[23] A prospective law has been defined to be one which contemplates the future, anticipating the regulation of future conduct, applicable only to cases arising after its enactment.[24] Applying this general definition to the particular subject of limitation of actions, it would follow that to construe an amendment to a statute of limitation as retrospective would be to give it effect to causes which have accrued prior to the passage of the amendatory

[20] Levy & Co. v. Davis, 115 Va. 814, 821, 80 S.E. 791, 794 (1914).
[21] Grant v. Baltimore & O.R.R., 66 W. Va. 175, 178, 66 S.E. 179, 181 (1909).
[22] *Ibid.*
[23] BLACK, LAW DICTIONARY (4th ed. 1951).
[24] *Ibid.*

act, while to construe it as prospective would limit its effectiveness to only those causes which arise subsequent to its passage. However, the question raises an issue upon which courts are not in harmony, the issue whether enactments of limitation statutes come within the purview of the definitions of the terms "retrospective" and "prospective."

As a general proposition, statutes of limitation operate only on the remedy and do not extinguish the right.[25] This result has often been formulated, perhaps unfortunately, on the historical distinction between a right and a remedy, in that, even after a limitation has barred a direct action, all collateral remedies are unaffected.[26] Similarly, some states deny to the defendant affirmative action based on a statute of limitations, where the repose of the limitation indicates that such relief should be available.[27]

Those courts which determine that a statute of limitations operates retrospectively rely on the fact that, by definition, a retrospective law is one which takes away or impairs existing *rights* of a vested nature, and statutes of limitation only affect the *remedies*.[28] The Supreme Court of the United States, in 1885,[29] when presented with the question of the right of the legislature to remove the bar of a statute of limitations on a personal debt, stated that such removal was not a deprivation of due process of law, for there was in the remedy of asserting the period of limitation no property right. At page 629 of the opinion the court said: "We are unable to see how a man can be said to have *property* in the bar of the statute [of limitations] as a defence [sic] to his promise to pay. . . ."[30] In such a case, the court has always distinguished between a property right as such, and the remedy which is afforded one claiming under a statute of limitations,[31] and has consistently stated that this latter

[25] Korczck v. Solonka, 130 W. Va. 211, 42 S.E.2d 814 (1947); Brown v. Hathaway, 73 W. Va. 605, 80 S.E. 959 (1914).

[26] *Cf*, Hunt v. Burn, 2 Salk 421, 91 Eng. Rep. 367 (K.B. 1702). The court here said that ". . . if a man has a right and several remedies, the discharge of one is not a discharge of the other. . ."

[27] Muckenthaler v. Noller, 104 Kan. 551, 180 Pac. 453 (1919).

[28] Davis & McMillan v. Industrial Acc. Comm'n, 198 Cal. 361, 246 Pac. 1046 (1926). The court stated the law of California, as predicated upon the law of the majority of courts of this country, to be as follows: ". . . Before the action is barred by the statute, the legislature has the absolute power to amend the statute and alter the period of limitations prescribed therein, subject only to the requirement that a reasonable time must be allowed for the prosecution of an action or proceedings after the passage of an amendment shortening the period. . . ."

[29] Campbell v. Holt, 115 U.S. 620 (1885).

[30] The importance of this decision and its effect on the law of Virginia and West Virginia are discussed in the text at notes 47-50, *infra*.

[31] E.g., Campbell v. Holt, 115 U.S. 620 (1885).

is not a property right as is contemplated in those situations where there has been a deprivation of property without due process of law.[32] The view announced by the Supreme Court in the *Campbell* case, *supra*, would extend this concept so far as to allow a repeal of a statute of limitations, which has barred a right of action, to revive the cause. A vigorous dissent by Mr. Justice Bradley, with whom Mr. Justice Harlan concurred, laid down the proposition that, if the statutory period for commencing a suit expires, no subsequent statute can renew this right, for the legislature is restricted in that this is a vested right which cannot be rescinded. This view appears to be in accord with the position taken by those jurisdictions which follow the reasoning that there is no property right embraced within a time limitation period. These courts hold with consistency that the legislature may either lengthen or shorten the applicable time period within which the action may be commenced, so long as this does not revive an action previously barred by the existing statute.[33]

While this would appear to be the rule in a majority of jurisdictions, both West Virginia and Virginia have effectively applied another mode of statutory construction to reach a contrary result. It is well settled and universally recognized principle of law that a statute should not have a retrospective operation unless this meaning is so clear, strong, and imperative that no other meaning can be annexed to it, or unless the intention of the legislature cannot otherwise be effectuated.[34] This rule, founded on the logical reason that no statute will be construed so as to or effect an unjust or absurd result, has been adopted and applied by the Supreme Court of Appeals of West Virginia to legislative enactments on numerous occasions.[35]. These decisions indicate the acceptance of this rule of construction as applied to statutes of a remedial nature, stating the rule that ". . . statutes of limitations . . . are no exception to the rule that a statute is to be construed as prospective in operation. . . ."[36] One of the first expressions by the court of the

[32] ". . . Retrospective statutes are usually construed to embrace only those which relate to substantial rights, as those which destroy or impair an existing right, or give a right where none before existed, and statutes which affect remedies only are not within the scope of the inhibition against retrospective laws." 36 Cyc. Statutes 1203 (1910).

[33] E.g., Klatt v. Detroit, 162 Mich. 186, 127 N.W. 409 (1910); Cook v. Kendall, 13 Minn. 324 (1868); Cole v. Van Ostrand, 131 Wis. 454, 110 N.W. 884 (1907).

[34] Chew Heong v. United States, 112 U.S. 536 (1884); United States v. Heth, 7 U.S. (3 Cranch) 398 (1805).

[35] See Peak v. State Compensation Comm'r, 141 W. Va. 453, 457, 91 S.E.2d 625, 629 (1956) (Dissenting Opinion).

[36] *Id.* at 463, 91 S.E.2d at 631.

rule was in 1890 in the case of *Stewart v. Vandervort*,[37] where the court expressed this as a "cardinal rule" in the interpretation of statutes and stated that this construction should be applied to remedial statutes, as the type legislation is no exception to the rule.

It was but two years later that the court was called upon more positively to assert the law of this state, in a factual situation where the legislature had extended the time within which an action could be brought on a contract from five to ten years. In syllabus point two the court made the following statement:

> "Statutes of limitation are *never to be construed retrospectively*, unless such construction is required by express command or by a necessary and unavoidable implication."[38] (Italics added.)

Although a suit in equity, the court applied the legal bar of the statute of limitation, going so far as to state that to apply, even by analogy, a statute of limitations retrospectively would be to work a hardship and an injustice.

The court later was faced with substantially the same question in the application and construction of an amendment to a limitation statute.[39] After review of the earlier cases, the court announced very explicitly, in syllabus points five and six of this case, the law of West Virginia to be as follows:

> "A cardinal rule in interpreting statutes is to construe them as prospective in operation in every instance, except where the intent that they shall act retrospectively is expressed in clear and unambiguous terms, or such intent is necessarily implied from the language of the statute, which would be inoperative otherwise than retrospectively. In doubt, it should be against, rather than in favor of retroactive operation."
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> "Statutes of limitations are no exception to the rule that statutes are prima facie to be given only prospective operation."

There appears to be no doubt that this proposition has become a part of the jurisprudence of this state to the extent that the issue should be free from question.[40] That this is in fact true has been

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[37] 34 W. Va. 524, 12 S.E. 736 (1890).
[38] Maslins Ex'rs. v. Heitt, 37 W. Va. 15, 16 S.E. 437 (1892).
[39] State v. Mines, 38 W. Va. 125, 18 S.E. 470 (1893).
[40] E.g., Vest v. Cobb, 138 W. Va. 660, 76 S.E.2d 885 (1953) (remedial statutes not excluded from general rule that retrospective legislation not favored); Harrison v. Harmon, 76 W. Va. 412, 85 S.E. 646 (1915) (statutes of limitation will not be given a retrospective effect); Bucker v. Hinton, 62 W. Va. 639, 59 S.E. 614 (1908) (should be construed so as to operate prospectively only); Hanley v. Potts, 52 W. Va. 263, 43 S.E. 218 (1903) (statute

recognized by the court itself. In 1915 Judge Poffenbarger, in refusing to apply a statute of limitation retrospectively, recognized that this was no longer an open issue in this jurisdiction, and made the following statement:

> ". . . About fifteen or twenty years ago, litigation predicated on the idea of retrospective action of statutes seems to have been ripe in this state. It brought forth, in a single volume of our reports, no less than four reiterations and applications of the rule just stated. *Rodgers v. Lynch*, 44 W. Va. 94, *Casto v. Green, Id.* 332, *Walker v. Burgess, Id.* 399, *Burns v. Hayes, Id.* 503. It is general and universal in its application and does not vary with the nature of the subject matter of the statute. Both substantive and remedial rights come under its operation. It has been repeatedly applied to statutes dealing with limitations of rights of action. . . ."[41]

The Supreme Court of Appeals of Virginia[42] reviewed extensively the law of statutory construction and recognized that not all states construed remedial statutes as prospective, but also stated that many of these cases rest on the express intention of the legislature to enforce the statute retrospectively. The court then stated that, on the basis of reasoning applied by both the West Virginia and Virginia courts, there appeared to be no good reason for excluding remedial statutes from the general rule. The court concluded by stating that such new limitation enactment would apply to all rights *after* its passage, leaving all causes ". . . existing at the time of such passage subject to the operation of prior limitations. . . . Therefore, rights accrued, claims arising, proceedings instituted, . . . before the passage of an amended statute, will not be affected by it, but will be governed by the existing statute. . . ."[43]

Thus it would seem to be a well-settled principle of law in West Virginia that statutes, even though only remedial and dealing with limitation of actions, are not to be given retrospective effect unless this is necessarily implied from their language. It also seems to be a settled issue that the statute of limitations in effect when the cause of action arose will govern in an action based on that transaction or occurrence.[44]

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changing the period of limitation does not apply to antecedent transactions); Walker v. Burgess, 44 W. Va. 399, 30 S.E. 99 (1898) (courts do not by mere construction give a statute a backward effect); Casto v. Greer, 44 W. Va. 332, 30 S.E. 100 (1898) (limitation actions are no exceptions to the general rule).

[41] Harrison v. Harmon, 76 W. Va. 412, 418, 85 S.E. 646, 648 (1915).

[42] Ferguson v. Ferguson, 169 Va. 77, 192 S.E. 774 (1937).

[43] *Id.* at 87, 192 S.E. at 777.

[44] Note 43, *supra* (Existing statute applied to accrued rights).

As noted at the outset of this discussion, there are two principal situations wherein construction of the amendment becomes a necessity, the first being where the remedy is barred at the effective date of the statute, and the second being where the cause of action accrued at the time the "old" limitation period was in existence and the action is commenced under the "new" limitation period. It may be concluded that, in the former situation, the United States Supreme Court has decided that such amendment will revive the cause of action, although various state courts are not in accord with this position.[45] As to the latter situation, there is a diversity of authority among various jurisdictions as to whether to proceed under a "right-remedy" theory, or whether to apply other principles of statutory construction in determining whether a statute of limitations should have a retrospective effect.[46]

In the case of *Campbell v. Holt*,[47] the Supreme Court allowed the repeal of a statute of limitations to revive a claim which had been previously barred. This opinion was announced at approximately the same time as the revisors to the Code of Virginia of 1887 were engaged in their work of revision. These men did not concur with the majority opinion of this case and consequently inserted in that Code a statutory provision later substantially enacted into the West Virginia Code and subsequently carried forward as a part of the statutory law of this state. The statute provides that a repeal ". . . as to any statute of limitations, under which the bar of a right of action or remedy is complete at the time the repeal takes effect, shall not be deemed a removal of such bar. . . ."[48] One of the revisors of the Virginia Code, in an address before the Virginia State Bar Association in 1891, stated that it was intended by this section to prescribe a rule different from the one that was declared by the Supreme Court.[49] It has been stated previously that, in almost all of the states of the Union where the question has arisen, the courts have held that the right to set up the statute of limitations, after it has run, is a vested right, and one which cannot be removed by a repeal of the act.[50]

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[45] Notes 28-33 *supra.*
[46] Notes 26-28, 35-43 *supra.*
[47] 115 U.S. 620 (1885).
[48] W. VA. CODE ch. 63, art. 1, § 2 (Michie 1955).
[49] See Kesterson v. Hill, 101 Va. 739, 45 S.E. 288 (1903).
[50] *Ibid.; Accord,* Johnston v. Gill, 68 Va. (27 Gratt.) 587 (1875). At page 595 of the opinion, Staples, J., says: "It is very clear that when the bar of the statute has once attached, the legislature cannot remove the bar by retrospective legislation."

This legislation and the expressions of the intent of the original drafters, would seem to indicate that, regardless of the view taken by the court as to the construction of a statute of limitation, when the situation arises where the original statutory period has elapsed before the effective date of the enactment of the additional period of limitation, the limitation applicable at the date the cause arose would be applied.

Where the right to commence the cause still exists when the amendment becomes effective the construction is by no means as simply resolved. Admitting here again the divergence of opinions of various jurisdictions as to the construction of such an amendment, the question still arises as to whether the legislature of this state has *expressed an applicable construction* which could be applied to remedial legislation. As an introduction to this phase of the discussion, the format of the West Virginia Code in this area should be considered and noted. Chapter 55 of the Code relates to Actions and Suits,[51] and article 2 is entitled Limitation of Actions and Suits.[52] Within this article are grouped the various sections (including the one here under discussion) relating to the applicable period of limitations of specific suits and actions. The final section of this article is entitled: "What Limitations Shall Apply to Rights and Remedies Existing When This Code Takes Effect,"[53] the pertinent portion reading as follows:

> "No action, suit, scire facias, or other proceeding, . . . the right to prosecute which, under the laws in force on that day, shall have accrued before that day, shall be barred by this article, any further or otherwise than as follows: . . . [*I*]*f the right to prosecute the same shall exist on that day, for a certain number of years prescribed by any statute, the same . . . may be prosecuted within such time as the same might have been prosecuted if this article had not been enacted, and not after. . . .*" (Italics added.)

From the title and the explicit wording used, it would seem that the legislature has made a clear and concise statement of intent, specifically, as to an action the right to prosecute which had accrued at the date the Code took effect. It should be noted that the legislature necessarily used permissive language ("may be prosecuted") when referring to an action not yet commenced on the effective date of the Code, as this statement must cover two possible

[51] W. VA. CODE ch. 55 (Michie 1955).
[52] W. VA. CODE ch. 55, art. 2 (Michie 1955).
[53] W. VA. CODE ch. 55, art. 2, § 20 (Michie 1955).

situations that could arise. This language would allow an action to be prosecuted under the longer limitation period if the statute shortened the applicable time, but the addition of the words "and not after" to the statute would seem to take cognizance of the situation where the statute lengthened the limitation period. The most logical interpretation given to this phase would be that the action may be prosecuted within such time as the same might have been, if the article extending the time had not been enacted, *but not after*, thus limiting the bringing of the action to the shorter period of time.

The question thus naturally follows as to whether such a statement, applicable to those situations which might arise during the transition period of the Code, may be applied to an amendment to one the of the sections, to the situations which might arise during the transition between the original statute and the amendment thereto.[54]

"When an amendment to a statute is adopted, there are not two separate enactments, the old and the new, but by their union there is produced one law, the statute as amended. From this it follows that the legislative intention, in making the amendment, is to be learned from a consideration of the original act and the amendment as one act."[55] Thus an amendment to a statute should be read as if it were a part of the original statute. The Supreme Court of Appeals of West Virginia applied this rule of statutory construction in the case of *State v. Montgomery*,[56] where one section of an act gave jurisdiction to justices of the peace in certain instances enumerated by another section. An amendment to this latter section made a certain act a crime and the jurisdiction of the justice over persons accused of this crime was questioned. The court held, at page 159 of the opinion, that where there is ". . . an amendment and reenactment of a former statute, the rule of construction is that the amendment becomes a part of the original act . . . *and of course must be read in relation to all of the provisions of the original act. . . .*"[57] (Italics added.)

Notwithstanding the fact that the statute is remedial in its nature, and is affected by those rules of construction peculiar to such enactments, there can be perceived no reason why it would not

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[54] It must be observed, however, that there is room for question as to whether the particular statutes here in question is in fact an amendment to or repeal of, the earlier statute. See notes 16-21 *supra*.

[55] BLACK, INTERPRETATION OF LAWS § 165, p. 575 (2d ed. 1911).

[56] 94 W. Va. 153, 117 S.E. 870 (1923).

[57] E.g., Mitchell v. Witt, 98 W. Va. 459, 36 S.E. 528 (1900).

be possible to apply the above stated rule of construction to the amendment. It is certainly not fanciful and imaginative to assume that the legislature was aware of the general statement of intention as to construction of the original periods of limitation when it enacted an amendment to one of them. This is a rule of statutory construction that is recognized by many authorities in this field. Black, in his work on *Interpretation of Laws,* previously referenced, states that it is not necessary for a later act to refer to a former act in order that the former might lend aid on a question of interpretation. He notes ". . . it is enough if they both relate to the same subject, as *the legislature must be presumed to have had the earlier statute in mind. . . .*"[58] (Italics added.)

To attempt to summarize effectively and draw valid conclusions from such a myriad of case decisions and an almost insurmountable number of rules of legislative construction relating to the subject is admittedly a practical impossibility. However, certain differences of opinion do exist in both areas of the law, and they may be restated for the purpose of clarifying some of the confusions that do exist.

As to judicial decisions, where an amendment to a statute of limitations becomes effective subsequent to the time that the bringing of the cause is barred by the time limitation, the United States Supreme Court rule appears to be that the cause of action is revived by a repeal of the existing statute. This rule is not followed in many state courts, and in West Virginia it is expressly disavowed by statute. In the situation where an amendment alters the existing time within which the action must be commenced, many courts, and probably the majority, state the rule to be that a statute of limitations affect the remedy only, and, for this reason, the legislature may either lengthen or shorten the applicable period of time without affecting the property rights of the parties involved, so long as a reasonable time is allowed for the bringing of those actions already in existence at the effective date of the change. West Virginia expresses another view, another well-recognized rule of statutory construction, that retrospective legislation is not favored by the law and that statutes of limitation are no exception to this rule, so all legislation, whether it be substantive or remedial, will be construed to operate prospectively only, unless a contrary intent is expressed by the legislature.

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[58] BLACK, INTERPRETATION OF LAWS § 104, p. 339 (2d ed. 1911).

Ancillary to these problems, though by no means unimportant to the consideration of the solution, are the questions of whether an addition to, or substitution for, a section of a statute is an amendment to or a repeal and reenactment of the statute in question, and the resultant effect of the various rules of statutory construction upon these different results; and to what extent the stated intention of the legislature at the time of the original enactment of the section will effect an amendment to the section.

There is no simple solution to the problem. It arises with amazing regularity in this state, as well as in others. The answers on each occasion are not always in complete harmony with the answers given on prior occasions. It would seem that one helpful clarification of the problem, and possibly one that should be considered, would be to have a clear expression of legislative intention at the time of the passage of such an act.

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